



Florida Department of Environmental Protection

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

CERTIFIED - RETURN RECEIPT REQUESTED

June 8, 2007

U.S. Army Corps of Engineers
c/o Richard Bonner, P.E.
Jacksonville District
P.O. Box 4970
Jacksonville, FL 32232

NOTICE OF EXEMPTION

**File No. 0216012-009-EE, Palm Beach County
Lake Worth Inlet South Jetty Repair Project**

Dear Mr. Bonner:

This is to acknowledge receipt of the request on May 1, 2007, for a *de minimus* exemption to repair the jetty on the south side of the Lake Worth Inlet at the entrance to Palm Beach Harbor.

The project site is located east of Palm Beach Harbor, within Sections 34 and 35, Township 42 South, Range 43 East, Palm Beach County, Atlantic Ocean, Class III Waters.

The proposed project consists of repairing the entire concrete cap on the South Jetty from station 43+05 to station 60+95, as referenced on the USACE plans and specifications, and removing four (4) Australian Pine trees and approximately 150 linear feet of Australian Pine hedges. As described in the U.S. Fish and Wildlife Biological Opinion (Activity No. 41420-2007-FA-0221):

Repairs will consist of preparing forms on the jetties to contain the cement, placing chinking stone or bags of cement into the interstitial spaces between the rocks, and placing cement into the forms. A variety of trucks will be used to construct the forms and temporary barrier, and to deliver the chinking stone or bags of cement. The cement will be placed onto the jetties either by gravity feed (piped or funneled) directly from cement trucks or transported by buggy along the top of the jetties. The purpose of the repairs is to reduce shoaling within the entrance channel and assist in maintaining safe navigation conditions.

Removal of Australian Pines would not be regulated under the Joint Coastal Permit program unless the trees were located in wetlands or on the beach berm or dune. Since that is not the case with the four trees mentioned in this application, their removal will not be addressed in this exemption.

Notice of Exemption
Lake Worth Inlet South Jetty Repair
File No. 0216012-009-EE
Page 2 of 5

Since construction will occur during the sea turtle nesting season, no beach access is proposed. The eastern (seaward) limit of the staging area is Station 57+50, currently located over 100 feet landward of the predominant vegetation line. Seaward of this location, equipment and vehicles will be restricted to the top the jetty itself. Bales of hay will be maintained at Station 57+50, between the jetty and the vegetation line to prevent sea turtles from entering the staging area. Daily turtle monitoring will also be conducted by an observer approved by the Florida Fish and Wildlife Conservation Commission (FWC). The proposed project is scheduled to begin in August or September 2007, and take approximately 120 working days to complete. Construction activities will be limited to daylight hours only. Therefore, the Department and the FWC do not anticipate significant adverse impacts to sea turtles or other natural resources.

Repairs and alterations to the jetty require a regulatory authorization for construction and operation of the project, unless otherwise exempt by statute or rule, and proprietary authorization to use state-owned submerged lands. Your request has been reviewed for these authorizations.

REGULATORY REVIEW – EXEMPTION VERIFIED

A project that may affect surface waters is regulated under Chapter 373, Part IV, Florida Statutes (F.S.). The proposed jetty repair is exempt, under Chapter 373.406(6), F.S., from the need for an environmental resource permit described in Rule 62-343.050(2), Florida Administrative Code (F.A.C). This determination is made because the above activities will have only minimal or insignificant individual or cumulative adverse impacts on water resources.

A project that may affect existing coastal conditions or natural shore and inlet processes is regulated under Chapter 161.041, F.S. The proposed jetty repair is exempt, under Rule 62B-41.004(2), F.A.C, from the need for a coastal construction permit described in Rule 62B-41.005, F.A.C. This determination is made because the structural changes will have insignificant impacts on coastal processes, and are not of a substantial nature either individually or cumulatively. Because the project is exempt from the need for an environmental resource permit and/or a coastal construction permit, as explained above, the project does not require a joint coastal permit described in Rules 62B-49.003 and 62-343.075(7), F.A.C.

The determination that your project qualifies for an exemption does not relieve you from the need to comply with all applicable water quality standards during the construction and operation of the facility. **Activities conducted under the above exemption(s) must be constructed and operated using appropriate best management practices and in a manner that does not cause water quality violations, pursuant to rule 62-302, F.A.C.** This determination shall not be valid if the project results in water quality violations or if the basis for the exemption is found to be materially incorrect.

The determination that your project qualifies as an exempt activity is based upon forms, drawings and documents provided to the Department as of May 30, 2007, and the statutes and

rules that were in effect at that time. This determination is effective only for the specific activity outlined above and may be invalid if site conditions materially change or if the governing statutes or rules are amended. In addition, any substantial alterations to the construction plans or location of the project should be submitted to the Department for review prior to commencement of work, as changes may result in the need for a permit. **In any event, this determination shall expire after one year.**

A copy of the applicable exemption language is attached.

PROPRIETARY REVIEW – AUTHORIZATION APPROVED

The project is not exempt from the need to obtain the applicable proprietary authorization for activities that are on or over sovereign (state-owned) submerged lands, as described in Chapter 253, F.S., and Rule 18-21, F.A.C. The Department acts as staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees), pursuant to Chapter 253.77, F.S. Under this authority, the Department has reviewed the proposed project location, and has made the following proprietary determinations:

The jetty repair activity was previously authorized for the use of sovereign submerged lands under Easement Nos. 23624 and 23624A dated April 10, 1964, and January 19, 1966, respectively, and is still subject to the terms and conditions of those documents.

NOTICE OF RIGHTS OF SUBSTANTIALLY AFFECTED PERSONS

This letter acknowledges that the proposed activity is exempt from permitting requirements of Chapter 373, Part IV and Chapter 161.041, Florida Statutes. This determination is final and effective on the date filed with the Clerk of the Department unless a sufficient petition for an administrative hearing is timely filed under sections 120.569 and 120.57 of the Florida Statutes as provided below. If a sufficient petition for an administrative hearing is timely filed, this determination automatically becomes only proposed agency action subject to the result of the administrative review process. Therefore, on the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. The procedures for petitioning for a hearing are set forth in the attached notice.

Be advised that neighboring property owners and other parties who may be substantially affected by the proposed activity allowed under this determination of exemption have a right to request an administrative hearing on the Department's decision that the proposed activity qualifies for this exemption. Because the administrative hearing process is designed to redetermine final agency action on the application, the filing of a petition for an administrative hearing may result in a final determination that the proposed activity is not authorized under the exemption established.

Notice of Exemption
Lake Worth Inlet South Jetty Repair
File No. 0216012-009-EE
Page 4 of 5

The Department will not publish notice of this determination. **Publication of this notice by you is optional and is not required for you to proceed.** However, in the event that an administrative hearing is held and the Department's determination is reversed, proceeding with the proposed activity before the time period for requesting an administrative hearing has expired would mean that the activity was conducted without the required permit.

If you wish to limit the time within which *all* substantially affected persons may request an administrative hearing, you may elect to publish, at your own expense, the enclosed notice (Attachment A -- for newspaper publication) in the legal advertisement section of a newspaper of general circulation in the county where the activity is to take place. A single publication will suffice.

If you wish to limit the time within which any *specific* person(s) may request an administrative hearing, you may provide such person(s), by certified mail, a copy of this determination, including Attachment A.

For the purposes of publication, a newspaper of general circulation means a newspaper meeting the requirements of sections 50.011 and 50.031 of the Florida Statutes. In the event you do publish this notice, within seven days of publication, you must provide to the following address proof of publication issued by the newspaper as provided in section 50.051 of the Florida Statutes. If you provide direct written notice to any person as noted above, you must provide to the following address a copy of the direct written notice.

Department of Environmental Protection
Bureau of Beaches and Coastal Systems
3900 Commonwealth Boulevard, Mail Station 300
Tallahassee, Florida 32399-3000

Please see attached a copy of the exemption language and note that all specific conditions in the rule must be met in order to qualify for this exemption. If the activities are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 28-14, F.A.C. If you have any questions, please contact Steven MacLeod at (850) 414-7806. When referring to this project, please use the file number listed above.

Sincerely,



Martin K. Seeling
Environmental Administrator
Bureau of Beaches and Coastal Systems

MKS/smm

Notice of Exemption
Lake Worth Inlet South Jetty Repair
File No. 0216012-009-EE
Page 5 of 5

Enclosures: Drawings (4 pages)
"Attachment A" – Discretionary Publication Notice
Referenced Exemption(s)

cc: James McAdams, USACE, Jacksonville
Matthew Miller, USACE, Jacksonville
Robbin Trindell, FWC, ISMS
Jeff Howe, USFWS, Vero Beach
Georgia Vince, DEP, Southeast District
Celora Jackson, DEP, BBCS-CCCL
Mark Taynton, DEP, BBCS-CCCL
Robert Brantly, DEP, BBCS-CE
Junaid As-Salek, DEP, BBCS-CE
JCP Compliance Officer
BBCS File

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to Section 120.52, Florida Statutes, with the designated
Department Clerk, receipt of which is hereby acknowledged.


Deputy Clerk


Date